

109TH CONGRESS
2D SESSION

S. 3915

To amend title XIX of the Social Security Act to encourage States to provide pregnant women enrolled in the Medicaid program with access to comprehensive tobacco cessation services.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2006

Mr. HARKIN (for himself, Mr. DURBIN, Mr. DODD, Mr. LAUTENBERG, Mr. SCHUMER, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to encourage States to provide pregnant women enrolled in the Medicaid program with access to comprehensive tobacco cessation services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Smoke Free Mothers
5 and Babies Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) At least 1 out of every 10 pregnant women
2 in the United States smokes, which accounts for
3 over 500,000 births per year.

4 (2) Tobacco use during pregnancy causes seri-
5 ous harm to the fetus. Fetal mortality rates are 35
6 percent higher among pregnant women who smoke
7 than among nonsmokers and the Surgeon General
8 reports that a pregnant woman who smokes is 1.5
9 to 3.5 times more likely than a non-smoker to have
10 a low birth weight baby.

11 (3) Studies have found that smoking and expo-
12 sure to secondhand smoke among pregnant women
13 is a major cause of miscarriage, stillbirths, and sud-
14 den infant death syndrome (SIDS).

15 (4) Preventing just 1 smoking-related low birth
16 weight baby can save more than \$40,000 in health
17 care expenditures.

18 (5) For every \$1 spent on smoking cessation
19 for pregnant women, an estimated \$3 in neonatal in-
20 tensive care costs could be avoided.

21 (6) Such expenditures have a disproportionate
22 impact on Medicaid, with estimates indicating that
23 pregnant women on Medicaid are 2.5 times more
24 likely to smoke than pregnant women not on Med-
25 icaid. Smoking-attributable neonatal health care

1 costs are estimated to be \$1,400,000,000 to
2 \$2,000,000,000 annually, and such costs for Med-
3 icaid total almost \$228,000,000, that is, approxi-
4 mately, \$738 per pregnant smoker.

5 (7) States this year will collect
6 \$21,300,000,000 from the Master Settlement Agree-
7 ment of November 23, 1998, between participating
8 tobacco manufacturers and Attorneys General of 46
9 States, the District of Columbia, the Commonwealth
10 of Puerto Rico, and 4 territories of the United
11 States, other settlement agreements between compa-
12 nies within the tobacco industry and the States of
13 Mississippi, Florida, Texas, and Minnesota, and to-
14 bacco taxes (an increase from \$20,000,000,000 in
15 fiscal year 2005). States are spending only 2.6 per-
16 cent of their tobacco revenue on tobacco prevention
17 and cessation.

18 (8) Evidence shows that the cuts States have
19 made in tobacco prevention funding since 2002 have
20 slowed or possibly stalled recent declines in youth
21 smoking, putting further progress at risk.

1 **SEC. 3. PROMOTING CESSATION OF TOBACCO USE BY**
 2 **PREGNANT WOMEN UNDER THE MEDICAID**
 3 **PROGRAM.**

4 (a) REQUIRING COVERAGE OF COUNSELING AND
 5 PHARMACOTHERAPY FOR CESSATION OF TOBACCO USE
 6 BY PREGNANT WOMEN.—Section 1905 of the Social Secu-
 7 rity Act (42 U.S.C. 1396d(a)(4)) is amended—

8 (1) in subsection (a)(4)—

9 (A) by striking “and” before “(C)”; and

10 (B) by inserting before the semicolon at
 11 the end the following new subparagraph: “; and
 12 (D) counseling and pharmacotherapy for ces-
 13 sation of tobacco use by pregnant women (as
 14 defined in subsection (y))”; and

15 (2) by adding at the end the following:

16 “(y)(1) For purposes of this title, the term ‘coun-
 17 seling and pharmacotherapy for cessation of tobacco use
 18 by pregnant women’ means diagnostic, therapy, and coun-
 19 seling services and pharmacotherapy (including the cov-
 20 erage of prescription and nonprescription tobacco ces-
 21 sation agents approved by the Food and Drug Administra-
 22 tion) for cessation of tobacco use by pregnant women who
 23 use tobacco products or who are being treated for tobacco
 24 use that is furnished—

25 “(A) by or under the supervision of a physician;

26 or

1 “(B) by any other health care professional
2 who—

3 “(i) is legally authorized to furnish such
4 services under State law (or the State regu-
5 latory mechanism provided by State law) of the
6 State in which the services are furnished; and

7 “(ii) is authorized to receive payment for
8 other services under this title or is designated
9 by the Secretary for this purpose.

10 “(2) Subject to paragraph (3), such term is limited
11 to—

12 “(A) services recommended with respect to
13 pregnant women in ‘Treating Tobacco Use and De-
14 pendence: A Clinical Practice Guideline’, published
15 by the Public Health Service in June 2000, or any
16 subsequent modification of such Guideline; and

17 “(B) such other services that the Secretary rec-
18 ognizes to be effective for cessation of tobacco use
19 by pregnant women.

20 “(3) Such term shall not include coverage for drugs
21 or biologicals that are not otherwise covered under this
22 title.”.

23 (b) EXCEPTION FROM OPTIONAL RESTRICTION
24 UNDER MEDICAID PRESCRIPTION DRUG COVERAGE.—

1 Section 1927(d)(2) of the Social Security Act (42 U.S.C.
2 1396r-8(d)(2)) is amended—

3 (1) in subparagraph (E), by inserting before the
4 period at the end the following: “, except in the case
5 of pregnant women when recommended in accord-
6 ance with the Guideline referred to in section
7 1905(y)(2)(A)”;

8 (2) in subparagraph (G), by inserting before the
9 period at the end the following: “, except, in the case
10 of pregnant women when recommended in accord-
11 ance with the Guideline referred to in section
12 1905(y)(2)(A), agents approved by the Food and
13 Drug Administration for purposes of promoting, and
14 when used to promote, tobacco cessation”.

15 (c) REMOVAL OF COST-SHARING FOR COUNSELING
16 AND PHARMACOTHERAPY FOR CESSATION OF TOBACCO
17 USE BY PREGNANT WOMEN.—

18 (1) GENERAL COST SHARING LIMITATIONS.—
19 Section 1916 of the Social Security Act (42 U.S.C.
20 1396o) is amended in each of subsections (a)(2)(B)
21 and (b)(2)(B) by inserting “, and counseling and
22 pharmacotherapy for cessation of tobacco use by
23 pregnant women (as defined in section 1905(y)) and
24 covered outpatient drugs (as defined in subsection
25 (k)(2) of section 1927 and including nonprescription

1 drugs described in subsection (d)(2) of such section)
 2 that are prescribed for purposes of promoting, and
 3 when used to promote, tobacco cessation by preg-
 4 nant women in accordance with the Guideline re-
 5 ferred to in section 1905(y)(2)(A)” after “com-
 6 plicate the pregnancy”.

7 (2) APPLICATION TO ALTERNATIVE COST SHAR-
 8 ING.—Section 1916A(b)(3)(B)(iii) of such Act (42
 9 U.S.C. 1396o–1(b)(3)(B)(iii)) is amended by insert-
 10 ing “, and counseling and pharmacotherapy for ces-
 11 sation of tobacco use by pregnant women (as defined
 12 in section 1905(y))” after “complicate the preg-
 13 nancy”.

14 (d) INCREASED FMAP FOR TOBACCO CESSATION
 15 COUNSELING SERVICES AND MEDICATIONS.—The first
 16 sentence of section 1905(b) of the Social Security Act (42
 17 U.S.C. 1396d(b)) is amended by inserting the following
 18 before the period: “, or medical assistance for counseling
 19 and pharmacotherapy for cessation of tobacco use by preg-
 20 nant women (as defined in subsection (y)) and for covered
 21 outpatient drugs (as defined in subsection (k)(2) of section
 22 1927 and including nonprescription drugs described in
 23 subsection (d)(2) of such section) that are prescribed for
 24 purposes of promoting, and when used to promote, tobacco

1 cessation by pregnant women in accordance with the
2 Guideline referred to in subsection (y)(2)(A)’’.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to services furnished on or after
5 the first fiscal year quarter that begins after the date of
6 enactment of this Act.

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